Filed 12/7/16 Heiple v. Pierce CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LISA L. HEIPLE, Plaintiff and Respondent, v. KIPPY R. PIERCE, Defendant and Appellant.	E062544 (Super.Ct.No. FAMSS1101704) ORDER MODIFYING OPINION AND DENIAL OF PETITION FOR REHEARING [NO CHANGE IN JUDGMENT]

Appellant's petition for rehearing filed November 30, 2016, is denied. The opinion filed in this matter on November 9, 2016, is modified as follows:

1. On page 3, in the first paragraph, the sentence "Mother argued that Father misunderstood the Oregon appellate court's ruling and that it was still unclear exactly how much money Father owed; the matter had been remanded to the lower Oregon court and was still pending," is modified as follows: "Mother argued that Father misunderstood the Oregon appellate court's ruling and that it was still unclear exactly how much money Father owed. Mother further asserted the matter was still pending in the Oregon courts."

Except for this modification, the opinion remains unchanged. This modification does not effect a change in the judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.

Filed 11/9/16 Heiple v. Pierce CA4/2 (unmodified version)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LISA L. HEIPLE, Plaintiff and Respondent, v. KIPPY R. PIERCE, Defendant and Appellant.	E062544 (Super.Ct.No. FAMSS1101704) OPINION

APPEAL from the Superior Court of San Bernardino County. Arthur Harrison, Judge. Affirmed.

Kippy R. Pierce, in pro. per., for Defendant and Appellant.

Law Offices of Gary E. Shoffner and Gary E. Shoffner for Plaintiff and Respondent.

In 2004, an Oregon court ordered defendant and appellant Kippy R. Pierce (Father) to pay $25,000 in child support arrears with a payment plan of $100 per month, for the three children Father shares with plaintiff and respondent Lisa L. Heiple (Mother). On March 28, 2011, the Oregon child support order was registered in Los Angeles County, where Father resides, and the amount of arrears was listed as $20,692.96. Father was also involved in a civil lawsuit, in San Bernardino County, concerning the failure to develop a parcel of real estate. As part of the settlement in the real estate matter, Father was paid approximately $320,000. (*Housey v. Pierce* (*Housey*) [San Bernardino County Super. Court case No. VCVVS041761].)

In April 2011 Mother gave notice that she would be registering the Oregon child support order in San Bernardino County. Mother listed the amount of arrears as $23,107, with $17,671.92 in interest being due, for a total of $40,778.92. Mother sought a lien against Father's *Housey* settlement money. Father opposed the lien. In June 2011 the San Bernardino trial court ordered Father's civil attorney in the *Housey* case to hold $38,730.39 in Father's client trust account until a hearing was completed in Los Angeles and/or Oregon regarding the amount of arrears Father owed.[1, 2]

---

[1] The trial court's June 28, 2011, Minute Order indicates the amount to be held in the trust account was $38,730.39. The "Order After Hearing" from the June 28, 2011, hearing, which is signed by Judge Haight and dated September 11, 2011, indicates the amount to be held in the trust account was $38,705.39. The record is unclear as to why the change in the amount was made but we will refer to the $38,705.39 amount for the remainder of the opinion.

[2] The record contains documents by Mother entitled "Notice of Lien," "Lien Claimant's Notice Re Filing of Notice of Lien and Proof of Service of Notice of Lien,"

[footnote continued on next page]

In June 2014 Father filed an ex parte motion to release the lien. Father asserted the Oregon Court of Appeals had ruled in Father's favor, finding only $100 per month payments were owed, as opposed to one payment in full. Mother opposed the motion. Mother argued that Father misunderstood the Oregon appellate court's ruling and that it was still unclear exactly how much money Father owed; the matter had been remanded to the lower Oregon court and was still pending. The trial court denied Father's motion to release the lien because the Oregon court first needed to determine how much money Father owed. Father filed a motion for reconsideration, which the trial court denied.

Father raises seven arguments on appeal: (1) Father contends the trial court erred by not granting full faith and credit to the Oregon appellate ruling; (2) Father contends the trial court erred by not following the doctrine of res judicata concerning the Oregon appellate ruling; (3) Father asserts the trial court erred by not releasing the lien because the lien amount of $38,705.39 is not reflected in any child support judgment; (4) Father contends the trial court erred by not releasing the lien because Mother failed to file a noticed motion in the *Housey* matter when obtaining the lien; (5) Father contends the

---

[footnote continued from previous page]
and "Amended Notice of Lien." Mother asserts that, if there were a fully developed record, we would see that she "was attempting to obtain a writ of execution to levy." The reporter's transcript provided in this case begins in June 2014. Mother asserts that, if this court had a fully developed record, we would see that, in June 2011, there was an on-the-record discussion about Mother's writ of execution in which the trial court sua sponte ordered Mother's attorney not to serve the writ of execution and ordered Father's attorney in the *Housey* matter to retain $38,705.39 in Father's client trust account. A September 16, 2011, order from the trial court provides that $38,705.39 of Father's settlement award from *Housey* was to be held in Father's civil attorney's client trust account "in lieu of the Court authorizing issuance of a writ of execution for levy on the proceeds of the settlement."

trial court erred by not releasing the lien because, after Father contested the registration of the child support order in San Bernardino County, an order for registration was not confirmed or entered; (6) Father requests this court strike an uncertified transcript from the record; and (7) Father contends he has been prejudiced by the decision not to release the lien. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. SUPPLEMENTAL JUDGMENT (2004)

In 2004, the Oregon trial court issued a supplemental judgment in Mother's and Father's dissolution of marriage case. Father agreed that $25,000 in child support was owed as of February 29, 2004. The supplemental judgment read, "[Father] agrees to pay this arrearage off at the rate of $100.00 per month commencing March 1, 2004, and a like payment on the first day of each month hereafter until the judgment is paid in full. This judgment will be without interest provided that [Father] pays the monthly payment each month. If any payment is not paid, then the judgment shall accrue interest at the rate of 9% per annum."

The orders in the supplemental judgment read, "'[Mother] is awarded judgment against [Father] for unpaid child support through February 29, 2004, in the amount of $25,000.00. This judgment shall be paid by [Father] to [Mother] at the rate of $100.00 per month commencing March 1, 2004, and a like payment on the first day of each month hereafter until the child support judgment is paid in full. This judgment shall be interest free, provided[] that [Father] pays the $100.00 payment each month and shall

accrue interest at 9% per annum on the entire unpaid judgment if [Father] fails to make said monthly payments.'"

Additionally, Father was ordered to pay $1,029 per month in child support for the period from March 1 through May 31, 2004, and $918 per month from June 1, 2004 until the children reached the age of majority, died, married, became emancipated, or until age 21 if the children were attending school. In the "Money Award" section of the Supplemental Judgment, within the subsection entitled "Interest start date," it reads, "Upon [Father] failing to make a monthly child support payment." The current and future child support payments for March 1, 2004, onward were later reduced to $635 per month.

B. CONTEMPT CASE

In 2011, in Oregon, Mother filed a motion requesting Father be held in contempt for failing to make the monthly payments toward the $25,000 arrearage. Mother asserted Father stopped paying in September 2009 and therefore owed interest. Father conceded he fell behind on his current child support payments, but argued that he had always paid the $100 for arrearages and therefore did not owe interest. Father argued he sent in two checks each month, one was in the amount of $100 marked "for arrears."

Mother asserted (1) Father could not direct $100 of a partial child support payment to arrearages, or, in the alternative, (2) under the "money award" section of the 2004 supplemental judgment, that interest would accrue when Father "failed 'to make a monthly child support payment'"—any child support payment, including current support.

The Oregon trial court found Father could direct his payment toward arrearages, but that he had failed to adequately do so. The trial court explained that when Father paid only $211 toward his $635 monthly payment in September 2009 he created a "new" arrearage of $424, thus when Father submitted a payment marked "for arrears," it was unclear if that was for the $25,000 arrearage or the $424 arrearage. The trial court found that, as of September 2009, Father failed to pay $100 toward the $25,000 arrearage. The trial court also accepted Mother's alternative argument that, pursuant to the "Interest start date" section of the 2004 Supplemental Judgment, interest would accrue when Father failed to make a current child support payment. The Oregon trial court held Father in contempt for failing to make payments on the arrearages and awarded interest on the unpaid balance. The trial court wrote in its judgment, "'[Mother] is awarded judgment against [Father] in the amount of $17,309.00 as the unpaid balance of the $25,000.00 child support arrearage judgment from the August 25, 2004 Supplemental Judgment plus interest at the rate of 9% per annum from September 1, 2009, until paid[.]'"

Father appealed the Oregon trial court's judgment. The Oregon Court of Appeals reversed. The Oregon appellate court concluded Father "manifested his intent to direct payment to the 2004 arrearage" because he sent a separate $100 check marked "for arrears." As to the alternative reasoning, regarding the "Interest start date" section, the appellate court concluded the phrase "monthly child support payment" referred narrowly to the $25,000 arrearage, and did not include current child support payments. Thus, the appellate court ruled the trial court erred in holding Father in contempt and

awarding Mother interest. The appellate court wrote, "Supplemental judgment reversed as to finding of contempt for failure to make child support arrearage payments and as to money award for interest on arrearage; otherwise affirmed."

Father petitioned the appellate court to clarify its ruling. According to Father, Mother had taken the position that, based upon the Oregon trial court's judgment, the arrearage of $17,309 was due in a lump sum payment. On February 20, 2014, the appellate court modified its prior opinion to reflect "to the extent the trial court concluded that the unpaid balance of the child support arrearage was immediately due to [M]other because [F]ather had failed to make $100 arrearage payments, that conclusion was error."

C. MOTION TO RELEASE THE LIEN

In June 2014, Father filed a motion, in San Bernardino County, to release the lien. Father asserted the Oregon appellate court issued a judgment concluding a lump sum payment was not due, and, therefore, the lien could be released.

Mother opposed Father's motion. Mother argued that in July 2014 she filed a Complaint for Declaratory Judgment in the Oregon trial court to adjudicate Father's child support obligations pursuant to the 2004 Supplemental Judgment. In the complaint, Mother asserted, "The [2004] agreement entered into between [Mother] and [Father] is not an installment contract, and therefore is due and owing according to its plain terms."

In Father's reply, he asserted the Oregon appellate court's holding that a lump sum payment is not due needed to be followed. Father asserted Mother's Complaint for Declaratory Judgment was barred by the doctrine of res judicata and therefore should be "disregarded and ignored" because Mother failed to seek Supreme Court review of the intermediate appellate court's opinion.

The San Bernardino trial court held a hearing on Father's motion to release the lien. At the hearing, Mother noted the Oregon appellate court had written "to the extent the trial court concluded that the unpaid balance of the child support arrearage was immediately due to [M]other because [F]ather had failed to make $100 arrearage payments, that conclusion was error." Mother argued it was "unclear what [was] the basis of [the trial court's] judgment" in awarding the lump sum amount to Mother. Mother essentially argued that, if the trial court's ruling was based on a reason other than Father's failure to pay the $100 monthly arrears, then the trial court's lump sum ruling stands.

The San Bernardino trial court asked how long the Oregon Complaint for Declaratory Judgment was anticipated to take. Mother's counsel was unsure because there were procedural issues as to whether the Oregon case should proceed in civil or family court. Father argued Mother was trying to have the Oregon trial court overrule the Oregon appellate court. Father asserted the San Bernardino court needed to proceed pursuant to the Oregon appellate court's judgment and release the lien because Mother failed to seek Supreme Court review in Oregon.

The San Bernardino trial court remarked that, in prior proceedings in Oregon, Father stated he had no interest in the $38,705.39 because there are "attorney liens" on the money as well. Father conceded there are attorney liens and other liens on the money but if those people were not paid from the $38,705.39 then he would be sued by those people, and therefore, he does have an interest in the money.

Mother argued that if the appellate court's ruling is as clear as Father suggests then the Oregon Complaint for Declaratory Judgment would be quickly resolved, likely by demurrer or judgment on the pleadings.

The trial court said, "My concern is that the judgment against [Father] at this point is for child support, and that has a priority in the Court's mind and it needs to be settled. Children don't come free and there's a sizeable amount. The question is at this point, the exact amount, the $38,000 lien, might be inappropriate if what [Father] owes is [$]19,000 or [$]18,000 in those areas. [¶] For that reason I think hearing what the amount owed determined by the Oregon Court might be appropriate prior to dissolving the lien and certainly modifying the lien if the amount is less than $38,000." The court denied Father's motion to release the lien.[3, 4]

---

[3] Father requests this court take judicial notice of the Oregon Circuit Court's April 9, 2015, general judgment of dismissal of Mother's Civil Declaratory Judgment. (*Heiple v. Pierce*, Circuit Court of the State of Oregon for Clackamas County, case No. CV14070664.) The Notice of Appeal in the instant case was filed on December 15, 2014. We take judicial notice of the document as required by law (Evid. Code, §§ 452, subd. (c), 453), but note that this was not information available to the trial court.

Father also requests this court take judicial notice of the following documents from *In the Matter and Marriage of Pierce and State of Oregon and Pierce* (*In re Pierce*) (Oregon Court of Appeals case No. A151441): (1) an October 30, 2013,

[footnote continued on next page]

DISCUSSION

A. APPEALABILITY

Father asserts the trial court's denial of Father's motion to release the lien is appealable because it is "an interlocutory judgment, order, or decree, . . . made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting." (Code Civ. Proc., § 904.1, subd. (a)(8).) Mother contends the trial court's order denying the motion is not directly appealable.

A lien can be created by (1) a contract between the parties, or (2) by operation of law. (Civ. Code, § 2881.) Oregon Revised Statutes section 25.670, subdivision (1),

---

[footnote continued from previous page]
opinion; (2) a February 20, 2014, opinion modifying the prior opinion; and (3) an April 17, 2014, judgment and designation of Father as the prevailing party for purposes of awarding costs. We take judicial notice of the documents as required by law. (Evid. Code, §§ 452, subd. (c), 453.)

Father requests that we "take judicial notice of the truth and facts" of the foregoing documents. While we have granted the request for judicial notice that is not the same as accepting the truth of the documents' contents. (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) We have taken notice of the documents' existence. "[T]he truth of statements contained in the document[s] and [the documents'] proper interpretation are not subject to judicial notice if those matters are reasonably disputable.'" (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 364, italics omitted.)

4 Father attached two exhibits to his Appellant's Reply Brief: (1) the April 9, 2015, notice of entry of judgment discussed *ante*, and (2) an August 3, 2015, Oregon Circuit Court order granting Father's motion for summary judgment against Mother's Complaint for Declaratory Judgment (*Heiple v. Pierce*, Circuit Court of the State of Oregon for the County of Clackamas, case No. CV14070664). We have already taken judicial notice of the April 9, 2015, order. We order the August 3, 2015, order stricken as it is not a proper attachment. (Cal. Rules of Court, rule 8.204(d).)

provides, "Whenever there is a judgment for unpaid child or spousal support, a lien arises by operation of law on any personal property owned by the obligor, and the lien continues until the liability for the unpaid support is satisfied or the judgment or renewal thereof has expired." California law provides, "A personal property lien for child support arising in another state may be enforced in the same manner and to the same extent as a personal property lien arising in this state." (Fam. Code, § 17523, subd. (f).)

Such a lien "is created by filing a notice of judgment lien in the office of the Secretary of State." (Code Civ. Proc., § 697.510, subd. (a), Fam. Code, § 17523, subd. (b).) Mother did not file a notice in the Office of the Secretary of State, presumably because Mother concluded such a lien would not reach the money in Father's client trust account. (Code. Civ. Proc., §§ 697.510, subd. (a), 697.530 [listing personal property subject to lien].) Mother went to court, and the court ordered Father's civil attorney for *Housey* to hold $38,705.39 in Father's client trust account until a hearing was completed in Los Angeles and/or Oregon regarding the amount of arrears Father owed to Mother.

The manner in which this particular court-issued "lien" was created was not by operation of law because it was created when the judge ordered Father's attorney not to release the settlement money. That is not how a child support lien created by operation of law works procedurally, so this "lien" cannot fall into the category of a lien created by operation of law.

There is no contract in this case. There is a supplemental judgment, wherein Father agreed he owed $25,000 in child support arrearages and would pay that debt in

monthly installments of $100; however, there is nothing indicating an intent on Father's part to create a security interest, such as a lien. (See *County of Los Angeles v. Construction Laborers Trust Funds for Southern California Administrative Co.* (2006) 137 Cal.App.4th 410, 414 [a promise to pay a debt does not create a lien].) Accordingly, a lien was not created by contract. In conclusion, the order issued by the San Bernardino trial court in 2011 did not create a lien.

Next, we examine whether the order created a writ of execution. "Execution has been defined as 'a process in an action to carry into effect the directions in a decree or judgment.' [Citation.] It has been allowed in enforcement of the provisions of settlement agreements where compliance was ordered by the decree. [Citations.] While the decree should state with certainty the amount to be paid [citations], it is sufficient if the amount may be definitely ascertained by an inspection of the record." (*Foust v. Foust* (1956) 47 Cal.2d 121, 124.) Child support orders are enforceable by writ of execution. (Code Civ. Proc., § 699.510, subd. (b); Fam. Code, § 290.) However, a writ of execution requires or commands that a payment be made. (*People v. Willie* (2005) 133 Cal.App.4th 43, 48.) In the instant case, the trial court directed Father's attorney to hold the money at issue and not distribute it. Accordingly, this was not a writ of execution because money was not ordered to be paid.

We now turn to whether the court created an injunction. "Family law court is a court of equity." (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 38.) The court's equitable powers allow it to enjoin collection of judgment pending resolution of other issues. (*Erlich v. Superior Court* (1965) 63 Cal.2d 551, 556.) The

court's order is restraining Father's civil attorney from dispersing money. The fact that the order is enjoining Father's attorney from dispersing money causes the order to be in the nature of an injunction. (See *People v. Kelley* (1977) 70 Cal.App.3d 418, 423 [injunctions enjoin activities].) An undertaking was not posted in this case; however, undertakings are not required to be posted in family law cases. (*In re Marriage of Guasch* (2011) 201 Cal.App.4th 942, 948-949.)

Accordingly, we proceed with this case with the understanding that the trial court's 2011 order is an injunction. The trial court's denial of Father's motion to dissolve the injunction is directly appealable. (Code Civ. Proc., § 904.1, subd. (a)(6); *Welsch v. Goswick* (1982) 130 Cal.App.3d 398, 404.)

B. FULL FAITH AND CREDIT

Father contends the trial court erred by not granting full faith and credit to the Oregon appellate ruling.

"The constitutional Full Faith and Credit Clause requires each state to give effect to official acts of other states. [Citation.] . . . A judgment entered in one state must be respected in another provided that the first state had jurisdiction over the parties and the subject matter." (*In re Laura F.* (2000) 83 Cal.App.4th 583, 592-593.) We apply the de novo standard of review when considering this constitutional issue. (*Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 433.)

The Oregon trial court wrote in its judgment, "'[Mother] is awarded judgment against [Father] in the amount of $17,309.00 as the unpaid balance of the $25,000.00 child support arrearage judgment from the August 25, 2004 Supplemental Judgment

plus interest at the rate of 9% per annum from September 1, 2009, until paid[.]'" The trial court's order could be understood as requiring a lump sum payment of $17,309.

The Oregon appellate court wrote, "[T]o the extent the trial court concluded that the unpaid balance of the child support arrearage was immediately due to [M]other because [F]ather had failed to make $100 arrearage payments, that conclusion was error." The appellate court left open the possibility that a lump sum payment could be owed by Father if it were owed for a reason other than Father failing to make the $100 arrearage payments.

At the time Father's motion was before the San Bernardino trial court, Mother had a pending Complaint for Declaratory Judgment in the Oregon trial court to adjudicate whether Father's child support obligations were owed in a lump sum payment or installment payments.

The San Bernardino trial court provided full faith and credit to the Oregon court system by permitting the Oregon court to clarify its ruling, rather than having the San Bernardino court interpret the Oregon court's ruling. The Oregon court's ruling could be viewed as leaving an option for a lump sum payment, thus it is an issue that the Oregon court needs to decide or clarify. The San Bernardino court is acting in accordance with the Full Faith and Credit clause of the constitution. Accordingly, we find Father's argument to be unpersuasive.

C. RES JUDICATA

Father contends the trial court erred by not following the doctrine of res judicata concerning the Oregon appellate ruling.

"'Res judicata' describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) Whether res judicata applies is an issue we review de novo. (*City of Oakland v. Oakland Police and Fire Retirement System et al.* (2014) 224 Cal.App.4th 210, 228.)

The San Bernardino court decided to wait for the outcome of Mother's Complaint for Declaratory Judgment that was pending in the Oregon trial court, and therefore did not dissolve the injunction. The injunction issue decided by the San Bernardino trial court was brought by Father, not Mother, and is not an issue that has been previously decided. The San Bernardino trial court was deciding whether it needed to wait for further direction from the Oregon courts—that issue has not been the subject of a previous judgment on the merits. Accordingly, we conclude res judicata does not apply.

D. MONETARY AMOUNT

Father asserts the trial court erred by not dissolving the injunction because the amount of $38,705.39 is not reflected in any child support judgment.

When a trial court considers whether to enjoin the collection of a judgment pending resolution of a disputed issue the court should consider, along with other factors, the probable amount of recovery. (*Erlich v. Superior Court*, *supra*, 63 Cal.2d at p. 556.) We apply the abuse of discretion standard of review. (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 866.)

As explained *ante*, the Oregon trial court wrote in its judgment, "'[Mother] is awarded judgment against [Father] in the amount of $17,309.00 as the unpaid balance of the $25,000.00 child support arrearage judgment from the August 25, 2004 Supplemental Judgment plus interest at the rate of 9% per annum from September 1, 2009, until paid[.]'" The appellate court wrote, "Supplemental judgment reversed as to finding of contempt for failure to make child support arrearage payments and as to money award for interest on arrearage; otherwise affirmed."

The appellate court concluded interest was not owed. In Mother's Oregon case, she was seeking a determination of whether the $17,309 in arrears was owed in a lump sum payment or installment payments. Thus, there is no dispute about the interest portion of the judgment. When Mother registered the Oregon child support order in San Bernardino County, she listed the amount of arrears as $23,107.00 with $17,671.92 in interest being due, for a total of $40,778.92. It appears that, at this point, the amount of arrears is $17,309 and the issue to be decided by the Oregon court was whether that amount was owed in a lump sum payment or installment payments. As such, there is no reason to hold the entire amount of $38,705.39; rather the only reasonable amount of money to enjoin would have been $17,309 because that is the most money Mother could expect to receive.

The trial court noted this issue, but did not act upon it. The trial court said, "The question is at this point, the exact amount, the $38,000 lien, might be inappropriate if what [Father] owes is [$]19,000 or [$]18,000 in those areas. [¶] For that reason I think hearing what the amount owed determined by the Oregon Court might be appropriate

prior to dissolving the lien and certainly modifying the lien if the amount is less than $38,000."

Father did not request the injunction be modified, he only requested that it be dissolved. Thus, while we agree there would have been reason to modify the injunction because the amount Father owes would not be $38,705.39, there was no reason to dissolve it because Father could have owed $17,309 in a lump sum payment. Because Father only requested dissolution of the injunction (not modification), we conclude the trial court did not err—the trial court could not err by failing to give relief that was not requested. (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 423.)

E. NOTICED MOTION

Father contends the trial court erred by not dissolving the injunction because Mother failed to file a noticed motion in the *Housey v. Pierce* matter when obtaining the injunction.

There are two problems with this argument: (1) Father is relying on law related to liens (Code Civ. Proc., § 708.470, subd. (a)), and, as discussed *ante*, this is an injunction, not a lien; and (2) even if this were a lien, we do not have the record from the *Housey* case that would allow this court to determine if Mother did or did not file a noticed motion in that case. (*Housey*, *supra*, case No. VCVVS041761].) Due to the lack of a record to support this contention we must conclude there was no error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141 [when appellant fails to meet his burden of providing an adequate record, the issue must be resolved against him].)

F. ORDER FOR REGISTRATION

Father contends the trial court erred by not dissolving the injunction because, after Father contested the registration of the child support order in San Bernardino County, an order for registration was not confirmed or entered. Father cites former Family Code section 4946 to support his contention.

From 2002 through 2015, former Family Code section 4946, subdivision (a), provided that a person seeking to enforce a child support order issued by another state "may send the documents required for registering the order to a support enforcement agency of this state." Former Family Code section 4946, subdivision (b), provided that "if the obligor contests the validity . . . of the order, [then] the support enforcement agency shall register the order pursuant to this chapter."

On April 4, 2011, Mother filed a "Notice of Registration of Out-Of-State Support Order" in San Bernardino County Superior Court. The notice provided that, if Father wanted to contest the validity or enforcement of the registration order, then he must request a hearing within 25 days. On April 22, Father requested a hearing regarding registration of the support order. Father explained that he was contesting the registration of the support order because the "[l]ien is fraudulent—[t]here is no judgment for $40,778.92." On June 28, the court held a hearing on the registration issue. The parties explained a hearing was scheduled in Los Angeles for August 26 concerning arrears. The San Bernardino Court deferred to the Los Angeles Court and ordered $38,705.39 held in Father's civil attorney's client trust account.

Thus, Father is correct that an order for registration was not confirmed, but that is because the issue is still pending.[5] The San Bernardino Court has been waiting since 2011 for the Los Angeles and Oregon courts to resolve the matter. Until the Los Angeles Court and/or Oregon Court determine(s) the exact amount Father owes and when/how it is owed, i.e., a lump sum payment or installment payment, the San Bernardino Court cannot confirm the support order. The registration and confirmation process is about enforcing an order made by another jurisdiction, so San Bernardino must wait for that other jurisdiction's order to be finalized. (See *In re Marriage of Haugh* (2014) 225 Cal.App.4th 963 [""""The court of another state may enforce a child support order registered in that state, but may not modify it unless the decree state has lost its continuing, exclusive jurisdiction""""].) Thus, we conclude the trial court did not err because it is correctly waiting for the issue to be resolved by another jurisdiction.

G. UNCERTIFIED TRANSCRIPT

1. *PROCEDURAL HISTORY*

Mother opposed Father's motion to dissolve the injunction, i.e., Father's motion to release the lien. Mother attached a variety of exhibits to her opposition, including an uncertified transcript from an Oregon administrative court hearing. The hearing concerned a motion for modification of the child support order. At the hearing, Father

[5] At oral argument in this court, Mother asserted the child support order was registered when filed. The order may have been registered, but it has not been confirmed. (Former § 4955, subd. (b) [procedure for confirming a non-contested registered order]; former § 4956, subd. (c) [procedure for confirming a contested registered order]; see also *In re Marriage of Chapman* (1988) 205 Cal.App.3d 253, 259 [discussing registration and confirmation].)

was speaking about the money being held in his civil attorney's client trust account, under the injunction, and said, "All of it's been dispersed except $38,000.00. Which is going to be taken by the attorneys that have liens on it. So I'm not going to get any out of that."

In Mother's opposition, Mother used the evidence to argue that Father would not suffer prejudice by the $38,705.39 being withheld from him because he has no personal interest in the money. In Father's Motion for Reconsideration concerning dissolving the injunction, Father cited to the uncertified transcript. Father relied on the uncertified transcript for evidence that Mother has been unemployed since June 2011.

2. *ANALYSIS*

Father requests this court strike the uncertified Oregon administrative court hearing transcript from the record.

When a party does not object to evidence in the trial court, then that evidence may be considered by the trier of fact. (*In re C.B.* (2010) 190 Cal.App.4th 102, 132-133.) In order for this court to review an alleged evidentiary error, the appellant must make """a specific and timely objection in the trial court on the ground sought to be urged on appeal."""" (*People v. Waidla* (2000) 22 Cal.4th 690, 717.)

Father does not direct this court to a location in the record where he objected to the uncertified transcript. Further, Father utilized the transcript by citing to it in his motion for reconsideration. Because Father did not preserve the issue for review, we conclude it has been forfeited. (*People v. Waidla*, *supra*, 22 Cal.4th at p. 717.)

H. <u>PREJUDICE</u>

1. *HARMLESS ERROR*

Father contends he has been prejudiced by the denial of his motion to dissolve the injunction. Father asserts he is suffering prejudice because he cannot pay his debts or liens or is being unnecessarily delayed in paying his debts or liens. We have not found an error on the part of the trial court, and therefore do not need to reach the issue of prejudice. (See *People v. Blackburn* (2015) 61 Cal.4th 1113, 1132 [prejudice analysis applies to errors made by the trial court].)

2. *INJUNCTION*

To the extent Father was raising the prejudice issue in connection with the injunction standard, we note there are two balancing factors for a preliminary injunction: (1) the likelihood the moving party will prevail, and (2) the relative harm, i.e., prejudice, to the parties from the issuance or nonissuance of the injunction. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463.) To the extent Father is asserting the trial court abused its discretion in deciding the prejudice/harm prong, we disagree. (See *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1047 [abuse of discretion standard applies].)

"'The single most important consideration in an action for support is the need of the child.'" (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1172, fn. 4.) Therefore, "[i]n any proceedings involving custody and support it is axiomatic that the 'court should always adopt the course that is for the best interests of the child.'" (*Evans v. Evans* (1960) 185 Cal.App.2d 566, 572.) "It is well settled that a child support

obligation '. . . runs to the child and not the parent.'" (*In re Marriage of Comer* (1996) 14 Cal.4th 504, 517.)

The trial court could reasonably conclude that Father's debt to his children was of the utmost importance when compared to Father's other debts and liens, because the children's needs should take precedence. Therefore, when Father argued that he would suffer prejudice by not paying his other debts, the trial court could reasonably reject that argument because Father would suffer the most harm by potentially not paying his most important debt—the debt owed to his children. Accordingly, we conclude the trial court did not err.

DISPOSITION

The judgment is affirmed. Respondent is awarded her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.